आयुक्त(अपील)काकार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 0792630506- टेलेफैक्स07926305136

सत्यमेव जयते

DIN NO. : **20220864SW000000E694**

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2323/2021 /3228 - 3233

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-48/2022-23**
दिनाँक Date : **24-08-2022** जारी करन की तारीख Date of Issue : 26-08-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित
Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZT2408210213498** dated **16.08.2021** issued by Assistant Commissioner, Central Goods and Service Tax, Division Kalol, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant** / ~~Respondent~~

M/s Royal Surgicare Pvt Ltd
Plot No. 832, Near Ganesh Rubber,
Prima Automization Lane, Santej,
Kalol, Gandhinagar, Gujarat - 382721

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) **Full amount of Tax, Interest, Fine, Fee and Penalty** arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to **twenty five per cent** of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइटwww.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the websitewww.cbic.gov.in.

ORDER-IN-APPEAL

Brief Facts of the Case:

M/s. Royal surgicare Pvt. Ltd. Plot No. 832, Nr. Ganesh Rubber, Prima Atomization Lane, Santej, Kalol, Gandhinagar-382721 (hereinafter referred as 'appellant') has filed the present appeal against Order No. ZT2408210213498 dated 16.08.2021, passed in the Form –GST-RFD-06(hereinafter referred as *'impugned order'*) rejecting refund claim of Rs. 2, 56,607/-, issued by the Assistant Commissioner, CGST, Division, Kalol, Gandhinagar Commissionerate(hereinafter referred as *'adjudicating authority* ').

2 (i) Briefly stated the facts of the case is that the *'Appellant'* is holding GST Registration having GSTIN 24AADCR3670H1ZG has filed present appeal on 28.10.2021. The *'Appellant'* had filed refund application on 12.07.2021 for refund of Rs. 2, 56,607/- for the tax period of 2018-19 on account of Export of Goods /Services without payment of Tax (Accumulated ITC). In response to said refund claim a Show Cause Notice dated 29.07.2021 was issued to the 'appellant' citing the reason " Other " and a Remark was also mentioned as *" As per Section 54 of CGST Act, 2017 and instructions in force, the claim is time barred."*

2(ii) Further, the *'Appellant '* was asked to furnish reply to the SCN within 15 days from the date of service of SCN and a personal hearing was also offered to 'Appellant' on 06.08.2021. Thereafter, the *adjudicating authority* has rejected the entire refund claim vide *impugned order* as *"No reply to scn received. Claim is time barred, hence rejected."*

2(iii) Being aggrieved with the *impugned order* the appellant has filed the present appeal in 28.10.2021 wherein stated that-

- The appellant have applied the refund of Export of goods without payment of tax for financial year 2018-19 in the month of July -2021. The Application has been rejected on the ground that it has been time barred.
- As per recent judgment of Supreme Court dated 23-September 2021 there is period of limitation has been given and according to that they can still eligible for the refund of the said period.
- The reason for being late for the refund process was that all the directors of the company had corona and company is being closed during the Month of March to April'2021. After that they have made the application for refund however the same has been rejected by giving the reason of time barred.

3. Personal Hearing in the matter was through virtual mode held on 20.07.2022 wherein Shri Kalrav Kalrav Patel CA appeared on behalf of the *'Appellant'* as authorized representative. During the P.H. he has reiterated the submissions made till date and informed that they want to give additional submission /information, which was approved and 7 working days period was granted.

Accordingly, the appellant has submitted the additional written submission dated 11.07.2022 wherein referred the judgment of the Hon'ble Bombay High Court in case of Saihar Supply Chain Consulting Pvt. Ltd. Writ Petition (L) No. 1275 of 2021 dated 10.01.2002. The appellant has also referred the CBIC's Notification No. 13/2022-Central Tax dated 05.07.2022. Considering the above judgment and Notification the appellant has stated that order of rejection of entire refund claim on the ground of time barred is not legal.

Discussions and findings:

4(i) I have carefully gone through the facts of the case available on records, submissions made by the *'Appellant'* in the Appeals Memorandum as well as additional written submissions. I find that the *'Appellant'* had preferred the refund claim on account of "Export of Goods /Services without payment of Tax (Accumulated ITC)" for the amount of Rs. 2,56,607/-. In response to the said refund application Show Cause Notice was issued to them proposing rejection of refund claims for reasons mentioned as "*As per Section 54 of CGST Act, 2017 and instructions in force, the claim is time barred.*"

4(ii) I find that in this case refund claim was rejected solely on time limitation ground. From the facts of the case I find that the refund claim for the period April'2018 to March 2019 (specific time period of refund has not been mentioned in any documents) filed on 12.07.2021 is beyond two years from the relevant date prescribed under explanation (2) to Section 54 of the CGST Act, 2017 and hence beyond time limit prescribed under Section 54(1) of the CGST Act, 2017. In their reply to Show Cause Notice the Appellant relied upon of Hon'ble Supreme Court in Misc. Application No. 665/2021 in SWM(C) No. 3/2020. I find that Hon'ble Supreme Court vide Order dated 23.09. 2021 ordered that for computing the period of limitation for any suit, appeal, application or proceeding the period from 15.03.2020 till 02.10.2021 shall stand excluded and consequently balance period of limitation remaining as on 15.03.2020 if any, shall become available with effect from 03.10.2021 and that in cases where the limitation period would have expired during period from 15.03.2020 till 02.10.2021 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. Subsequently, Hon'ble Supreme Court vide order dated 10.01.2022 order that in continuation of order dated 23.09. 2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi – judicial proceedings.

4(iii). *Further, I find that the appellant in the present appeal has referred Notification No. 13/2022-Central Tax dated 05.07.2022 issued by the CBIC. The relevant para is reproduced as under:*

(iii) excludes the period from 1st day of March, 2020 to the 28th day of February 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.

2. *This notification shall be deemed to have come into force with effect from the 1st day of March, 2020.*

In view of above, I find that in the present matter the claim was filed for the period April'2018 to March'2019 on 12.07.2021 , accordingly, following the order of Hon'ble Supreme Court in MA 665/2021 in SMW(C) No. 3/2020 as well as in the light of Notification No. 13/2022- Central Tax dated 05.07.2022, I hold that the entire claim for April'2018 to 31st March 2019 filed on 12.07.2021 is not hit by time limitation prescribed under Section 54 of CGST Act, 2017. Hence, the refund claim filed by the appellant succeeds on time limitation ground. Needless to say, since the claim was rejected on the ground of time limitation, the admissibility of refund on merit is not examined in this proceeding. Therefore, any claim of refund filed in consequences to this Order may be examined by the appropriate authority for its admissibility on merit in accordance with Section 54 of the CGST Act, 2017 and Rules made there under.

5. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, allow the appeal of the *"Appellant"*.

6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

6 The appeal filed by the '*Appellant*' stand disposed off in above terms.

24/08/22

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: .08.2022

Attested

(H. S. Meena)

Superintendent

Central Tax (Appeals)

Ahmedabad

By R.P.A.D.

To,

M/s. Royal surgicare Pvt. Ltd.
Plot No. 832, Nr. Ganesh Rubber,
Prima Atomization Lane, Santej, Kalol,
Gandhinagar-382721

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST &C.Ex, Commissionerate- Ahmedabad – Gandhinagar
4. The Assistant Commissioner, CGST & C.Ex, Division-Kalol ,. Gandhinagar Commissionerate-
5 The Additional Commissioner, Central Tax (System), Gandhinagar Commissionerate-.
6. Guard File..
7. P.A File